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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA

CONCERNED CITIZENS FOR A SAFE)	
COMMUNITY, AN ASSOCIATION; AND DONNA)	CIVIL CASE
COX, DONALD COX, AND CHRISTINA STERN)	
INDIVIDUALS)	NO.2:08-1763-KJD-LRL
)	
Plaintiffs)	THIRD AMENDED
)	COMPLAINT FOR
vs.)	DECLARATORY AND
)	INJUNCTIVE RELIEF
NYE COUNTY, BOARD OF NYE COUNTY)	
COMMISSIONERS, JONI EASTLEY, in her)	
Official Capacity, GARY HOLLIS, in his)	
Official Capacity, BORASKY, ANDREW)	
"BUTCH" in his Official Capacity,)	
PETER LIAKOPOULOS, in his Official)	
Capacity, and MIDGE CARVER, in her)	
Official Capacity; CORRECTIONS)	
CORPORATION OF AMERICA, INC.; OFFICE)	
OF FEDERAL DETENTION TRUSTEE, and)	
PAHRUMP ALLIANCE FOR ECONOMIC)	
DEVELOPMENT (Defendant).)	
)	
Defendant s)	

COMES NOW Plaintiffs, CONCERNED CITIZENS FOR A SAFE
 COMMUNITY, AN ASSOCIATION; and DONNA COX, AN INDIVIDUAL by and
 through their undersigned attorney, Nancy Lord, MD, Esq., and
 complain for injunctive relief for violations under 42 U.S.C.A.

1 §§ 4321, 4332 and supplemental claims under the Nevada Revised
2 Statutes.

3 **I. INTRODUCTION**

4 1. This is a civil action for declaratory and injunctive relief
5 under the Administrative Procedure Act ("APA"), 5 U.S.C. §§
6 551-76. The claims arise from Defendant s' violations of
7 the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§
8 4321-4370d, and the Council on Environmental Quality's
9 guidelines (regulations) implementing NEPA, 40 C.F.R. §§
10 1500-1508. This action is brought under the right of review
11 provision of the APA, 5 U.S.C. § 702.
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13
14 2. Plaintiffs seek an order declaring that Defendant s have
15 violated NEPA and enjoining Defendant s and their employees
16 and agents from further action on the proposed detention
17 facility to be located at 2190 Mesquite Ave., formerly known
18 as 2250 East Mesquite Ave., Pahrump, Nevada, and from
19 further action effectuating the Development Agreement signed
20 between Defendant s Corrections Corporation of America
21 ("CCA") and Nye County, Nye County Board of County
22 Commissioners (BOCC), the Office of Federal Detention
23 Trustee ("OFDT"), and Pahrump Alliance for Valley Economic
24 Development ("PAVED").
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1 **II. PARTIES**

2 4. CONCERNED CITIZENS FOR A SAFE COMMUNITY, is an Association
3 of citizens of Pahrump, Nevada; DONNA COX is an Individual
4 and Citizen of Pahrump, Nevada, located in Nye County,
5 Nevada.

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7 5. Each of the Plaintiff organization and individuals described
8 above has attendees who live and/or work in Pahrump, Nevada
9 and specifically near the site of the proposed facility.
10 Plaintiffs attendees and Individual Plaintiff use nearby
11 national forests for a variety of purposes, including, but
12 not limited to, hiking, backpacking, photography, scientific
13 study, wildlife observation, hunting and fishing. They
14 intend to continue to do so on an ongoing basis in the
15 future. Plaintiff's attendees and Individual Plaintiff
16 derive recreational, spiritual, professional, aesthetic,
17 educational and other benefits and enjoyment from these
18 activities. Moreover, Plaintiff's attendees and Individual
19 Plaintiffs live in Pahrump Nevada and seek to continue to
20 enjoy the benefits of bright stars at night against a dark
21 desert sky and a peaceful and safe rural community.

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24 6. Defendant Board of Nye County Commissioners are the county
25 commissioners for Nye County, Nevada and include JONI
26 EASTLEY, in her Official Capacity as Chairwoman, GARY HOLLIS
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1 in his Official Capacity, BUTCH BORASKY in his Official
2 Capacity, PETER LIAKOUPOLIS, in his Official Capacity, and
3 MIDGE CARVER, in her Official Capacity.

4 7. Defendant The CORRECTIONS CORPORATION OF AMERICA, INC., is
5 a corporation located at 10 Burton Hills Boulevard,
6 Nashville, Tennessee 37215 that builds and manages for-
7 profit prison facilities throughout the nation, and has
8 agreed to contract to build such a facility in Pahrump,
9 Nevada in spite of the overwhelming opposition by the
10 citizens of that community. In accordance with the
11 Development Agreement, CCA is to perform functions that are
12 regularly performed by the Bureau of Prisons, a federal
13 agency, including but not limited to incarcerating,
14 employing, transporting and providing medical care to
15 federal pre-trial detainees who are awaiting trial at the
16 United States District Court in Las Vegas.

17 8. Defendant The OFFICE OF FEDERAL DETENTION TRUSTEE ("OFDT")
18 is part of the Department of Justice and is a federal agency
19 "that achieves efficiencies, effectiveness and operational
20 synergies within the detention and incarceration community
21 by fostering interagency cooperation, mutual understanding,
22 accountability and teamwork. Established and activated in
23 September 2001 by directive of Congress, the Federal
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1 Detention Trustee ensures that Federal agencies involved in
2 detention provide for the safe, secure and humane
3 confinement of persons in the custody of the United States
4 while awaiting trial or immigration proceedings. OFDT's
5 coordination of detention activities includes the effective
6 and efficient expenditure of appropriated funds that are
7 deployed with a consistent approach by federal law
8 enforcement agencies." <http://www.usdoj.gov/ofdt/>
9

10 9. Defendant P.A.V.E.D., INC., Pahrump Alliance Valley
11 Economic Development, is a Nevada Corporation established on
12 or about September 10, 2007 [Exh 1]; PAVED, INC. is a Nevada
13 Corporation established on or about April 13, 2004 [Exh 2];
14 P.A.V.E.D., INC. merged into PAVED, INC. effective December
15 5, 2008, by filing dated March 18, 2009 [Exhs 1 and 2]
16 ("PAVED"). Defendant PAVED was established at the
17 direction of the Town Board of Pahrump as a Town Advisory
18 Board. The function of Defendant PAVED is ostensibly to
19 supervise the economic development of Pahrump but its real
20 purpose was to effectuate the approval of a Development
21 Agreement with CCA to build an OFDT detention center in the
22 middle of Pahrump without knowledge of or input by the
23 citizens of Pahrump, Nevada.
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10. Defendant PAVED has received and continues to receive money from the Town of Pahrump and has at least eight members (Al Balloqui, Laurayne Murray, Charles Gronda, Bill Dolan, Vicky Parker, Phil Huff, Paula Elefante and Victoria Balent) who are or were officials of the Town of Pahrump. Al Balloqui, original Chair of Defendant PAVED, is now Community Business Development and Ordinance Enforcement for the Town of Pahrump. Defendant PAVED holds its meetings at the Bob Ruud Community Center, a facility that is owned by the Town of Pahrump and available to private organizations that pay a fee and also provide a Certificate of Liability Insurance, naming the Town of Pahrump as "additionally insured". Defendant PAVED is neither required to provide a fee nor a Certificate of Liability Insurance to the Town of Pahrump.

III. JURISDICTION AND VENUE

11. The court has jurisdiction over all causes of action herein pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) because this action arises under the laws of the United States, including the National Environmental Policy Act, 42 U.S.C. §§ 4321, 4332, et seq.; the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; and the

1 Equal Access to Justice Act, 28 U.S.C. § 2412 et seq. The
2 relief is authorized pursuant to 28 U.S.C. §§ 2201, 2202,
3 and 5 U.S.C. § 706; and supplemental jurisdiction over
4 state law claims under 28 USC § 1367. Jurisdiction and
5 relief are further authorized by Amendments I, freedom of
6 speech, and XIV, due process clause, of the United States
7 Constitution.
8

9 12. Venue is proper in this Court under 28 USC § 1391(e) and 5
10 U.S.C. § 702 because a substantial part of the events or
11 omissions giving rise to the claims occurred here in Nye
12 County, Nevada, the proposed facility is to be located here,
13 and several of the Plaintiffs and Defendant s are based
14 here.
15

16 **IV. STATEMENT OF FACTS**

17 13. On July 15, 2004, during a period of peak real estate
18 values, United Holdings Corp. purchased 2250 E. Mesquite
19 from Bruce M. Patterson and Ann Patterson Stahl for the
20 purchase price of \$1,200,000 [Exh 3].
21

22 14. On November 21, 2006, the Department of Interior, Fish and
23 Wildlife Service, published in the Federal Register, Vol.
24 71, No. 224, page 67363, a Notice of Intent that:
25

26 "advises the public that we intend to gather information
27 necessary to prepare an Environmental Impact Statement (EIS)
28 regarding the proposed Southern Nye County Multiple Species
Habitat Conservation Plan (MSHCP) and issuance of an

1 incidental take permit (Permit) for endangered and
2 threatened species in accordance with section 210(a)(1)(B)
of the Endangered Species Act of 1973, as amended (Act)."

3 This Notice mentioned Nye County [P. 67364, col. 1, para. 1]
4 but made no mention of plans to build a prison or detention
5 center. [Exh 4]
6

7 15. On June 5, 2007 a letter was sent from the Louis Berger
8 Group, consultants of Defendant OFDT, regarding "Notice of
9 a Public Scoping Meeting to Initiate the Environmental
10 Impact Statement Process" [Exh 5]. The announcement made no
11 mention that a detention center was planning to be built in
12 Pahrump.
13

14 16. On June 7, 2007 Defendant OFDT published a Notice in the
15 Federal Register, Vol. 72, No. 109, page 31606, that a Las
16 Vegas area detention center was to be considered that
17 included the site at 2250 Mesquite Ave., and stated that a
18 public scoping meeting would be held at a date, place and
19 time to be announced. [Exh 6]
20

21 17. On Friday, June 15, 2007, the Pahrump Valley Times ("PVT")
22 published a notice regarding a Tuesday, June 19, 2007
23 meeting. The 2-day notice also made no mention that a
24 detention center was planning to be built in Pahrump. [Exh
25 7]
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1 18. No other form of announcement was made in Nye County in
2 regard to this scoping meeting.

3 19. On June 19, 2007 a "Public Scoping Meeting Concerning the
4 Draft Environmental Impact Statement Process for Proposed
5 Contractor Detention Facility, Las Vegas, Nevada Area" was
6 presented by U.S. Department of Justice, Defendant OFDT.
7 Per the sign-in sheet, 17 persons attended, including 7
8 government officials (there are more government officials in
9 the transcript), 1 news reporter. Maximum number of
10 residents signed in is 9. An additional 5 government
11 officials and 1 resident spoke at the meeting. [Exh 8,
12 Transcript]
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15 20. Upon information and belief, the participants were, with a
16 sole exception, government officials and/or members of
17 Defendant PAVED. Defendant OFDT and Defendant CCA
18 have been speaking with our public officials since November
19 2006 [Exh 8, Transcript, p.8]. Al Balloqui, Chair of
20 Defendant PAVED, stated that he had been involved since
21 January 7, 2007, during which time he had already had 18
22 meetings [Exh 8, Transcript, p.27]. Those 18 meetings were
23 not noticed meetings. Defendant OFDT states that the
24 "process, really, with the public begins tonight" [Exh 8,
25 Transcript, p.9]. The only citizen who had come to the
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1 meeting because she had seen the advertisement in the PVT,
2 Anne Bousquet had commented that the public was not present.
3 [Exh 8, Transcript, pp. 30-31] Defendant OFDT replies, ".
4 . . remember this. It's the first kick-off meeting. We
5 will have more meetings." [Exh 8, Transcript, p.31]
6

7 21. Prior to this first "kick-off" meeting, the BOCC had already
8 removed a 50,000 foot (9.5 mile) restriction prohibiting
9 building a prison within 9.5 miles of a residence. Prior to
10 this first "kick-off" meeting, the BOCC had already created
11 a new zone, Community Facilities, to allow the prison on E.
12 Mesquite. Uninformed, the public had not yet even attended
13 the first Scoping Meeting.
14

15 22. On July 11, 2007, the Nye County Regional Planning
16 Commission heard a request for a zone change for the E.
17 Mesquite property to Community Facilities. On July 18,
18 2007, the BOCC approved the zone change. [Exh 9]
19

20 23. On December 13, 2007, the Louis Berger Group forwarded the
21 Draft Environmental Impact Statement ("DEIS"). This
22 correspondence was sent to only 32 people in Pahrump, of
23 which 24 were government officials and 2 were news
24 reporters, leaving a possible 6 residents noticed. [Exh 10]
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26 24. On December 21, 2007, the Environmental Protection Agency
27 published a Notice of Availability of the DEIS in the
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1 Federal Register, Vol. 72, No. 245, page 72707. The Notice
2 described the location as "Las Vegas Detention Facility"
3 without mention of Pahrump, Nye County, or Mesquite Avenue.
4 [Exh 11].

5
6 25. Notice in the PVT stated that the DEIS would be reviewed for
7 a 45 day period.

8 26. Between January and February 2008, Defendant OFDT stated
9 the preferred site is 2250 E. Mesquite (in responses to 36
10 of 38 documents containing over 130 separate letters). [Exh
11 12, Final Environmental Impact Statement ("FEIS"), Sec.
12 VIII, sample Docs. 1-3]

13
14 27. On January 9, 2008, Defendants CCA and OFDT were made aware
15 that there is no water, no sewer and the water table is
16 falling at the 2250 E. Mesquite site. [Exh 13, FEIS, Sec.
17 VIII, Doc. 3]

18
19 28. On January 16, 2008, a PVT article announced "Detention
20 center hearing set for tomorrow evening" and the hearing was
21 held on January 17, 2008. Review period for the DEIS ended
22 on February 4, 2008. [Exh 14]

23 29. On January 17, 2008, a second scoping meeting was held at
24 which few attended other than the carefully selected
25 government invitees. There is no sign-in sheet attached to
26 the transcript; a review of the speakers from the audience
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1 indicates there were six speakers. All six speakers were
2 members of Defendant PAVED. Even so, support was not
3 unanimous as Mr. Dave Stevens stated, "You talk about
4 environment. It will bring environment all right, the wrong
5 kind of environment." [Exh 15]
6

7 30. On January 29, 2008, the U.S. Environmental Protection
8 Agency notified Defendant OFDT that it had rated its DEIS
9 as ED-2, Environmental Concerns - Insufficient Information.
10 Nova Blajez, Manager of the Environmental Review Office
11 wrote: "We are concerned about the potential impacts of the
12 proposed project on water resources and air quality." After
13 criticizing the findings regarding the jurisdiction over
14 ephemeral waters, Blajez noted:
15

16 "EPA is concerned about the general uncertainty of
17 the water supply for this project. For the two
18 sites located within Pahrump, Nevada, the EIS
19 states that the potable water supply service and
20 wastewater collection service is currently
21 unavailable, although service could be provided by
22 extending a water main and wastewater collection
23 line to the selected site. The majority of surface
24 water resources within Nye County have already
25 been appropriated and existing groundwater
26 allocations exceed the perennial yield of the
27 Pahrump Basin. Based on recent projections, a
28 shortfall of 65,000 to 61,000 acre-feet per year
is projected by the year 2050." [Exh 16, FEIS,
Section VIII, Document 30].

31. On March 14, 2008, Defendant CCA recorded a Memorandum
of Right to Purchase the 2250 E. Mesquite location. No

1 other proposed location had such a Memorandum attached
2 to it. [Exh 17]

3 32. On March 27, 2008, the Pahrump Mirror's front-page
4 headline read: "Detention center headed to Pahrump.
5 Facility to be built on Mesquite Ave." [Exh 18]
6

7 33. On March 28, 2008, the Environmental Protection Agency
8 published a Notice of Availability of the Final
9 Environmental Impact Statement ("FEIS") and began a 30-
10 day review. Federal Register, Vol. 73, No. 61, page
11 16672. Again, it described the site as a "Las Vegas
12 Detention Facility" and made no mention of Pahrump or
13 of Nye County, Nevada. [Exh 19].
14

15 34. Notice was given in the PVT, and on April 28, 2008, the
16 review period ended.

17 35. One hundred (100) form letters dated January 14, 2008
18 from Pahrump citizens were received. Sixty-seven (67)
19 of these were in favor of a different site and the
20 other thirty three (33) did not specify a site. Not
21 one letter requested the 2250 E. Mesquite location.
22 [Exh 20, FEIS, Sec. VIII, Docs. 11-12, sample letter]
23

24 36. On May 22, 2008, the Department of Justice published in
25 the Federal Register, Vol. 73, No. 100, page 29780, a
26 "Notice of the Availability of the Record of Decision
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1 Concerning a Proposal to Award a Contract to House
2 Federal Detainees Within a Contractor-Owned/Contractor-
3 Operated Detention Facility in the Las Vegas, NV,
4 Area". This Notice, the first to denote that the 2250
5 Mesquite Ave. location was the "agency preferred
6 alternative", published as a Notice, not a proposed
7 Rule, did not provide for Comment. [Exh 21] This Notice
8 relied on the previously published Notices of
9 Environmental Impact Statements:
10

11 A Draft EIS was issued on December 23, 2007,
12 coinciding with publication of the Notice of
13 Availability (NOA) in the Federal Register (72 FR
14 72707). The NOA provided for a 45-day public
15 comment period which began on December 23, 2007,
16 and ended on February 4, 2008
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18
19 37. The proposed site lies within one mile of approximately
20 35 residences, and within three miles of about 100
21 residences. [Exh 22, Decl. Jeff Bobeck and aerial
22 photographs 1-3]

23 38. On May 14, 2008, the Nye County Regional Planning
24 Commission split the 160 acre E. Mesquite location into
25 2 parcels of approximately 120 acres and 40 acres.
26 [Exh 23, Agenda Item 17]
27
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1 39. On May 16, 2008, a PVT front-page headline reads:
2 "It's Official. Detention Center is on the Way" [Exh
3 24] It was not, however, "official" as the Development
4 Agreement had not yet been submitted by Defendant
5 CCA.
6

7 40. On May 19, 2008, Defendant CCA secured the contract
8 from Defendant OFDT to build on the "agency preferred
9 alternative", i.e., the East Mesquite location [Exh
10 25]. This was clearly to be a detention center to hold
11 federal pre-trial detainees and pre-immigration hearing
12 undocumented aliens.
13

14 41. The next day, Defendant CCA put out a press release
15 announcing that Defendant CCA will be building a
16 "1072-bed prison" in Pahrump [Exh 26]. However, per
17 the Development Agreement, a 1,500 bed facility is to
18 be constructed.
19

20 42. On July 1, 2008, during a down-turned real estate
21 market, Defendant CCA purchased from John Hui,
22 principal of United Holdings Corp., the above-mentioned
23 120 acre parcel (no. 027-421-05, formerly part of no.
24 027-421-10) for \$6,990,000, and the address was changed
25 to 2190 East Mesquite Ave. [Exh 27] The site still has
26 no water, no sewer, no electricity, is located in close
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1 proximity to an airport and the town dump and all of
2 the heavy equipment therein, and within the habitat for
3 the desert tortoise.

4 43. There were other sites available far more suited for a
5 detention center. There were sites outside of town and
6 closer to Las Vegas. There were sites on Route 95, or
7 Nellis. There were sites that were owned by the town
8 or the county, which would have brought profit to the
9 town or county, rather than to an individual seller.
10 The Jean, Nevada prison site was available and would
11 have been an excellent choice and far more expedient.
12 The Jean site has water, sewer, electric; it is near an
13 easily accessible highway; it is closer to Las Vegas
14 and it is ready to be filled with prisoners.

15 44. On August 19, 2008, there was a meeting of Defendant
16 PAVED with Defendant CCA representatives.
17 Approximately 90 people attended the meeting, the
18 majority of whom was opposed to the prison siting.

19 45. On August 20, 2008 Defendant BOCC held a meeting to set
20 a date, time and location for a public hearing on the
21 proposed Development Agreement. [Exh 28]

22 46. This public hearing was scheduled for and held on
23 September 16, 2008 at the Ruud Center, which was filled
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1 to overflowing its 350 person capacity. People were
2 turned away. The overwhelming majority was clearly
3 against the building of the prison. During the meeting
4 Commissioner Eastley stated: It's a "done deal."
5 Additionally, the Agenda backup shows that the
6 Commissioners have all voted in favor of the
7 Development Agreement, even though neither a motion nor
8 a vote has yet been made. The BOCC continued the
9 public hearing to October 21, 2008. [Exh 29]
10

11 47. On October 21, 2008 the BOCC public hearing regarding
12 the proposed Development Agreement was continued from
13 September 16, 2008. The public again filled the Ruud
14 Center to maximum capacity of 350 persons. The
15 overwhelming majority was once again against the
16 prison. Commissioner Eastley again stated "It's a done
17 deal." Defendant BOCC did not have an updated
18 Development Agreement and continued the public hearing
19 to December 16, 2008. [Exh 30]
20

21 48. A continued BOCC public hearing and possible vote on
22 the Development Agreement was held on December 16,
23 2008. After two months, the Development Agreement was
24 still in draft form with only one of eight Exhibits
25 attached. Changes, some substantive, were made orally
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1 only for about one and a half hours of continuous
2 changes only with no discussion. Again, the public was
3 informed that comments were only to be directed to the
4 terms of the Development Agreement because the question
5 as to whether or not to permit the building of the
6 federal detention facility was already decided. In
7 spite of massive public outcry, Defendant BOCC voted
8 unanimously to approve the Development Agreement which
9 was effectuated on January 5, 2009. [Exh 31]
10

11 49. It is well known that water is scarce in the desert and
12 the Pahrump water table is dropping. There is no water
13 at the site, as required by the EIS. The utility
14 company has petitioned the Public Utility Commission of
15 Nevada ("PUC") to extend its tariff area. There is
16 still no agreement between the utility company and
17 Defendant CCA for water.
18

19 50. There are no sewers at the site. The utility company
20 does not have the right to provide sewer in this area.
21 It has applied to the PUC to expand its tariff area.
22 No public hearings have been held on this issue. There
23 is still no agreement between the utility company and
24 Defendant CCA for sewer.
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1 51. The proposed sewer lines were to deliver sewage to
2 Plant #3 on the Willow Creek Golf Course. However,
3 this property has since been sold to a new owner with
4 no obligation to accept the sewage. Effluent with
5 extremely high levels of E. Coli was found and Nye
6 County shut the sewer facility down.
7

8 52. The FEIS states that water and sewer are unavailable at
9 the E. Mesquite site and that water and sewer must be
10 ensured before issuing a contract. [Exh 16, FEIS, Sec.
11 VIII, p.189, para. 7] Nothing in Defendant OFDT's
12 Record of Decision guarantees or ensures sewer and
13 water.
14

15 The facility will rely on public utility providers
16 for water supply, wastewater collection and
17 treatment There are no plans to develop
18 on-site water supply or wastewater treatment
systems to serve the needs of the proposed
facility.

19 [Exh 32, p.6] Water and sewer are not ensured.

20 53. No public hearings have been held by the PUC to extend
21 their tariff area.
22

23 54. The FEIS on Defendant CCA's facility fails to analyze
24 adequately or take a hard look at the likely impacts on
25 the desert tortoise, burrowing owl, and their habitats,
26 and moreover the effect on the yucca plant. The
27 Biological Opinion from U.S. Fish & Wildlife requires
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1 only \$51,957 remediation and a fence around the area
2 before grading, and allows a kill of possibly "only
3 two" threatened desert tortoises. There is no agreement
4 by Defendant CCA to implement the Reasonable and
5 Prudent Measures set forth in the Biological Opinion.

6 [Exh 33]

7
8 55. The FEIS ignores the numerous individually prepared
9 letters pointing out problems with the project [Exh
10 33, FEIS, Exh VII-1, Docs 13-19] and instead relies
11 upon the sixty seven (67) form letters signed by
12 members of Defendant PAVED in favor of a different
13 location. [Exh 33, FEIS, Exh VII-1, Doc. 11, 12].

14
15 56. On June 26, 2007, after Defendant PAVED held its
16 meeting of carefully selected invitees, without public
17 notice of any sort, Defendant BOCC held a meeting for
18 "Discussion, deliberation, and possible review of the
19 sites selected for possible location of a detention
20 facility in Pahrump" and distributed copies of the
21 material "distributed by the Trustee" for the purported
22 scoping meeting held on June 19, 2007 by Defendant
23 PAVED. [Exh 34].

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26 57. On September 11, 2007 the Town Board of Pahrump voted
27 Defendant PAVED as its "Official Economic Development
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1 Organization." [sic, Exh 35]. Prior to that date and
2 at the time of the "scoping" meeting, Defendant PAVED
3 had no state, county or town recognition whatsoever.

4 58. No open and public meeting was held by Defendant BOCC
5 to make the important decision to abdicate its
6 responsibility to Defendant PAVED which acted in
7 concert with Defendant OFDT and the full knowledge of
8 Defendant CCA in regards to the NEPA scoping process,
9 40 CFR 1501.7, 1506.6.
10

11 59. Had the NEPA process, including but not limited to
12 scoping, been properly conducted, Defendant BOCC
13 could have learned from the citizens of Pahrump prior
14 to signing the Development Agreement that Defendant
15 CCA's current involvement with federal facilities is
16 limited to managing two low security federal
17 facilities.
18

19 60. Had the NEPA process, including but not limited to
20 scoping, been properly conducted, Defendant BOCC could
21 have learned from the citizens of Pahrump that all
22 FDC's and MDC's, which hold a much more dangerous and
23 volatile inmate population, are managed by the Bureau
24 of Prisons. The contracting out of this dangerous
25 function is a first for Defendant OFDT and there is
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1 only one other FDC that is in other than a metropolitan
2 location. [Exh 36]

3 61. There is no electricity at the site. The electric
4 utility, at a recent meeting with the residents of
5 Pahrump, stated that it would be a "strain" on the
6 company to provide sufficient electric power to the
7 prison given the electric company's current
8 infrastructure. The Development Agreement does not but
9 must address this problem. The people of Pahrump, a
10 declining population, have been advised by the electric
11 coop that the cost of service will be rising to provide
12 infrastructure. Residents will be charged an
13 additional 8.5% on their bills. The question as to who
14 will pay for the new infrastructure has not been
15 addressed.
16

17
18 62. Pahrump is a country town. The citizens enjoy the
19 starlight and the moon rising. Defendant CCA has
20 chosen a location high up on the fan overlooking the
21 homes of the Pahrump Valley. The prison, because it is
22 high on the fan and in our town area, will be seen by
23 almost every home in the Valley. And the lights at
24 night will be unbearable for residents and the
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1 visibility of the stars will be greatly obstructed and
2 encumbered to area residents.

3 63. The area is close enough to local residences, and even
4 a private airport, that it could facilitate the escape
5 of prisoners, allegedly detainees to be deported with
6 little incentive to proceed through their deportation
7 proceedings, which could place Pahrump residents in
8 grave danger.
9

10 64. The landfill is diagonally across from the proposed
11 site and handles hazardous waste. There is a
12 possibility of hazardous spills at the landfill. The
13 landfill operators have not been required to
14 acknowledge in writing the status of any hazardous
15 spills prior to the Commissioners signing the
16 Development Agreement because it may affect the
17 Development Agreement and the construction schedule.
18
19 The landfill has heavy equipment which could easily be
20 stolen and driven into the prison fences.
21

22 65. Defendants OFDT, CCA, BOCC and PAVED ignore the
23 considerable research of which they are aware, for
24 example the more recent Washington State University's
25 26-year analysis by Professor Greg Hooks, which
26 indicates that the presence of a prison in this rural
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1 area will actually contribute to economic stagnation.
2 Defendant OFDT had listened to a talk by Professor
3 Hooks and was, therefore, aware that the economic
4 studies used in the FEIS were outdated and disproved by
5 more recent studies.
6

7 66. Defendants CCA, BOCC and PAVED equate payments for
8 utility services with profits for the County, another
9 unfounded assumption. They assume there will be
10 significant purchase of goods and services from local
11 suppliers. In fact, as a chief selling point to
12 various contracting agencies and bond sellers, the
13 industry brags that it is able to operate efficiently
14 by dealing with centralized purchasing through
15 national, rather than local or even statewide
16 providers. They simply can't have it both ways. They
17 also assume that employment opportunities will favor
18 Nye County. In fact, Defendant CCA is well aware that
19 in its facilities, sited in depressed towns such as
20 Olney Springs, it draws the majority of its employees
21 from commuters from Pueblo, Colorado. Defendant OFDT
22 may not have known this, but it should have at least
23 challenged that assumption with some observable fact.
24
25
26
27
28

1 67. On December 16, 2008, after being served and notified
2 of the Court hearing re injunction scheduled for
3 December 23, 2008, Defendant BOCC nevertheless voted
4 unanimously to approve the Development Agreement which
5 was to go into effect on January 5, 2009.
6

7 68. The privatization of a detention facility for pre-trial
8 detainees was described as "new territory" or going
9 into a new area by representatives of the federal
10 government. The experimental basis of this facility
11 was never publicized in any of the above notices and
12 meetings.
13

14 69. Nye County Code 17.04.700.A.14.e, stated: "The facility
15 [correctional facility] must be located at least fifty
16 thousand (50,000) feet from a residential district."
17 Defendant BOCC voted to approve Bill 2007-07, which
18 removed this 50,000 ft (9.5 mile) requirement from the
19 Code on April 18, 2007 so that a prison can now be
20 built in proximity to any and all residences.
21 Defendant BOCC contemporaneously created and approved a
22 new zone category of Community Facilities ("CF").
23

24 70. The Nye County Code Sec. 17.04.120 mandates that zoning
25 districts be established by structure height and it is
26 not certain whether the facility will be 40 feet or
27
28

1 higher. The Nye County Code, section 17.04.750.5
2 states: "For sites five or more acres, the maximum
3 height of a light pole, measured from the finished
4 grade to the top of the pole, shall be 30 feet." The
5 Development Agreement calls for lighting at 35 feet.
6 Defendant BOCC should have been required to review this
7 inconsistency and amend the Code, if necessary, prior
8 to signing the Development Agreement.
9

10 71. The Nye County Fire Department is not prepared to fight
11 a fire in a 40' structure. They have no equipment that
12 will reach that high.
13

14 72. In addition, there are burrowing owls that nest in the
15 area.
16

17 73. The Yucca in the area have not been taken into
18 consideration. They are protected plants.
19

20 74. Upon information and belief, employees of two local
21 businesses and senior citizens were offered a free
22 lunch for appearing at that hearing and wearing "YES"
23 buttons, and were placed at the front of the room.
24 Those persons who were against the building of the
25 detention center were relegated a separate room in the
26 back from which their applause or other expression
27 could not be heard in the main room.
28

COUNT I**Violation of the Administrative Procedures Act and the
National Environmental Policy Act (NEPA)
(CCA and OFDT)**

75. Plaintiffs re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

76. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. § 1500.1. Among other things, NEPA requires all agencies of the federal government to prepare a "detailed statement" that discusses the environmental impacts of, and reasonable alternatives to, all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(c). This statement is commonly known as an Environmental Impact Statement ("EIS").

77. Here, Defendant CCA while ostensibly a private organization is to perform the functions regularly performed by the Bureau of Prisons, a federal agency, and it did not comply with 42 U.S.C. § 4332(2) © but

1 instead relied upon the insufficient notices published
2 by Defendant OFDT. The single notice in the Federal
3 Register that stated that a prison or detention
4 facility would possibly be built in Pahrump, Nye
5 County, Nevada was the Record of Decision published
6 after the period for public comment had expired. The
7 notice of the Scoping meeting failed to provide notice
8 that one of the proposed sites for the Las Vegas area
9 detention facility was in Pahrump. [Exh 6, June 7, 2007
10 Notice]
11
12

13 78. Following the June 7, 2007 Notice, until the Notice of
14 Record of Decision of May 22, 2008, the notices as to
15 the DEIS and FEIS stated "Las Vegas Area Detention
16 Center" and failed to inform the public that the
17 detention center was to be built in Pahrump, NV.
18

19 79. At the time it was disclosed, as Record of Decision in
20 May 2008, it was too late for citizens to comment.

21 80. Defendant BOCC abdicated its responsibility in regards
22 to public notice to Defendant PAVED, which, while
23 ostensibly a private group, was in fact created at the
24 direction of the Town Board for the purpose of holding
25 scoping meetings disingenuously designed to appear as
26 if public comment was being sought. Defendant PAVED
27
28

1 assisted and acted in concerted action with Defendants
2 CCA, OFDT and BOCC to foist the detention center on an
3 unwilling public before they were aware that it was
4 being done.

5
6 81. The abdication of the responsibility of Defendant BOCC
7 to Defendant PAVED was done at a time and place unknown
8 to Plaintiffs and without any public and open meeting
9 as required by NRS 241.200 and in a deliberate scheme
10 to circumvent the requirements of the statute that is
11 required to be followed under NEPA pursuant to 40
12 C.F.R. §§ 1506.6(a)(3)(B)(iii).

13
14 82. The notices published by Defendant OFDT and the
15 Environmental Protection Agency on this matter failed
16 to provide interested persons an opportunity to
17 participate in the rule making required under NEPA.

18
19 83. Defendant CCA, as a federal actor in that the
20 Development Agreement requires that it perform the
21 functions normally designated to the Bureau of Prisons,
22 had an equal responsibility along with Defendant OFDT
23 to assure that the NEPA process was properly conducted
24 prior to breaking ground on the proposed site.

25
26 84. The EIS process is intended "to help public officials
27 make decisions that are based on understanding of
28

1 environmental consequences" and to "insure that
2 environmental information is available to public
3 officials and citizens before decisions are made and
4 before actions are taken." 40 C.F.R. § 1500.1(b)-(c)

5 85. NEPA requires that an EIS analyze "direct effects,"
6 which are "caused by the action and occur at the same
7 time and place," as well as "indirect effects which . .
8 . are later in time or farther removed in distance, but
9 are still reasonably foreseeable." 40 C.F.R. § 1508.8.

10 86. Defendants CCA, OFDT and BOCC, by abdicating the
11 scoping process to Defendant PAVED, which did not issue
12 the public notices required under NRS 241.200 failed
13 entirely to: (a) Make diligent efforts to involve the
14 public in preparing and implementing their NEPA
15 procedures; (b) Provide public notice of NEPA-related
16 hearings, public meetings, and the availability of
17 environmental documents so as to inform those persons
18 and agencies who may be interested or affected.

19 87. Defendants CCA, OFDT and BOCC, by abdicating the
20 scoping process to Defendant PAVED, which did not issue
21 the public notices required under NRS 241.200 failed
22 entirely to follow the affected State's public notice
23 procedures for comparable actions; publish in local
24
25
26
27
28

1 newspapers; notice through other local media; notice to
2 potentially interested community organizations
3 including small business associations; publish in
4 newsletters that may be expected to reach potentially
5 interested persons; direct mail to owners and occupants
6 of nearby or affected property; posting of notice on
7 and off site in the area where the action is to be
8 located; hold or sponsor public hearings or public
9 meetings whenever appropriate or in accordance with
10 statutory requirements applicable to the agency;
11 solicit appropriate information from the public;
12 explain in its procedures where interested persons can
13 get information or status reports on environmental
14 impact statements and other elements of the NEPA
15 process; make environmental impact statements, the
16 comments received, and any underlying documents
17 available to the public pursuant to the provisions of
18 the Freedom of Information Act (5 U.S.C. 552), make
19 materials to be made available to the public without
20 charge to the extent practicable. 40 CFR 1506.6.

21
22
23
24
25 88. Defendants CCA, OFDT and BOCC, by abdicating the
26 scoping process to Defendant PAVED, failed entirely to
27 provide that there was an early and open process for
28

1 determining the scope of issues to be addressed and for
2 identifying the significant issues related to a
3 proposed action, the process termed scoping.

4 89. Defendants CCA, OFDT and BOCC, by abdicating the
5 scoping process to Defendant PAVED, lost the
6 opportunity that the scoping process provided to
7 identify the significant issues related to the proposed
8 action that the public would have brought to the
9 attention of Defendant OFDT. One such significant
10 issue is that the contracting out of this dangerous
11 function is a first for Defendant OFDT and that there
12 is only one other FDC that is in other than a
13 metropolitan location. [Exh 36]

16 90. The Notice Of Intent (40 CFR § 1508.22) in the Federal
17 Register did not provide information as to when and
18 where the scoping meeting was to be held as provided in
19 § 1507.3(e).

21 91. Defendants CCA, OFDT and BOCC, by abdicating the
22 scoping process to Defendant PAVED, failed in their
23 entirety to: invite the participation of affected
24 federal, state, and local agencies, any affected Indian
25 tribe, the proponent of the action, and other
26 interested persons (including those who might not be in
27
28

1 accord with the action on environmental grounds),
2 unless there is a limited exception under § 1507.3 ©.
3 40 CFR 1501.7.

4 92. Defendants CCA, OFDT and BOCC, by abdicating the
5 scoping process to Defendant PAVED, failed in their
6 entirety to hold an early scoping meeting or meetings
7 which may be integrated with any other early planning
8 meeting the agency has; revise the determinations made
9 if substantial changes are made later in the proposed
10 action, or if significant new circumstances or
11 information arise which bear on the proposal or its
12 impacts. 40 CFR 1501.7
13
14

15 **Count II**
16 **Violation of the Due Process Clause**
17 **of the U.S. Constitution Fifth and Fourteenth Amendments**
18 **(CCA, OFDT, Nye County, BOCC and PAVED)**

19 93. Plaintiffs re-allege, as if fully set forth herein,
20 each and every allegation contained in the preceding
21 paragraphs.

22 94. The notice provided by Defendant OFDT, for the benefit
23 of Defendant CCA and upon which Defendant CCA relies,
24 for the detention facility to be built by Defendant CCA
25 was not "notice reasonably calculated, under the
26 circumstances, to apprise interested parties of the
27 pendency of the action."
28

1 95. The notice provided by Defendant PAVED, with the
2 approval of Defendant BOCC, a newspaper advertisement
3 for the scoping meeting that did not state that any
4 proposed site for the Las Vegas area detention center
5 was in Pahrump, was insufficient.

6
7 96. The notice was insufficient in law when the state is
8 about to take action which would affect an interest in
9 life, liberty, or property protected by the Due Process
10 Clause of the Fourteenth Amendment.

11
12 **Count III**
13 **Violation of NRS 278.260 (2)**
(Nye County and BOCC)

14 97. Plaintiffs re-allege, as if fully set forth herein,
15 each and every allegation contained in the preceding
16 paragraphs.

17 98. A zoning regulation, restriction or boundary, or an
18 amendment thereto, must not become effective until
19 after transmittal of a copy of the relevant application
20 to the town board, citizens' advisory council or town
21 advisory board pursuant to subsection 5, if applicable,
22 and after a public hearing at which parties in interest
23 and other persons have an opportunity to be heard. The
24 governing body shall cause notice of the time and place
25 of the hearing to be:
26
27
28

1 (a) Published in an official newspaper, or a
2 newspaper of general circulation, in the city,
3 county or region;

4 (b) Mailed to each tenant of a mobile home park if
5 that park is located within 300 feet of the
6 property in question; and
7

8 . . . at least 10 days before the hearing.

9 99. In this case, the zoning commission denied the
10 variance, and meetings were held on only one days
11 notice to the public.
12

13 100. The decision of Defendant BOCC to over-rule the zoning
14 commission was arbitrary and capricious.

15 **Count IV**
16 **Nuisance**
17 **(CCA, Nye County, BOCC and PAVED)**

18 101. Plaintiffs re-allege, as if fully set forth herein,
19 each and every allegation contained in the preceding
20 paragraphs.

21 102. The construction of the facility will be violation of
22 the common law tort of public nuisance to the citizens
23 of Pahrump, including but not limited to named
24 Plaintiff, who will have to suffer 24 hour lighting, be
25 deprived of the quiet and wild desert ambience in which
26
27
28

1 they chose to live, and will no longer see the great
2 abundance stars at night.

3 103. The construction of the facility will be a violation of
4 the common law tort of nuisance as the citizens of
5 Pahrump, including but not limited to the named
6 Plaintiffs, will be endangered by the possibility of
7 escapees potentially armed with chemicals and equipment
8 taken from the nearby town dump and possibly even
9 flying in aircraft stolen from the airport that is also
10 near the proposed facility.
11

12 104. The construction of the facility will violate the
13 common law tort of nuisance as Pahrump citizens will be
14 forced to observe numerous busses filled with prisoners
15 traveling through its main road en route to this
16 Honorable Court, 70 miles away from the location.
17
18

19 **Count V**
20 **Violation of Nevada Open Meeting Law, NRS 241.020**
21 **(Nye County, BOCC and PAVED)**

22 105. Plaintiffs re-allege, as if fully set forth herein,
23 each and every allegation contained in the preceding
24 paragraphs.

25 106. The delegation by Defendant BOCC of the holding of the
26 scoping meetings required under NEPA to Defendant
27 PAVED, an ostensibly private organization that
28

1 performed as a County and Town Entity was made to avoid
2 the Notice requirements of NRS 241.020.

3 107. The June 19, 2007 was not announced in a manner to
4 assure adequate participation by Pahrump residents in
5 that, *inter alia*, the advertisement in the Pahrump
6 Valley Times did not state that any site for the
7 proposed Las Vegas area detention facility was in
8 Pahrump, Nevada or in Nye County.
9

10 108. The January 17, 2008 meeting was announced in the
11 newspaper with only one day's notice to the public.
12

13 109. Upon information and belief, Defendant BOCC Chairwoman
14 Joni Eastley announced at a recent meeting of the
15 Republican Womens' Club that all of the Commissioners
16 were going to vote in favor of the Development
17 Agreement on December 16, 2008.
18

19 110. No meeting to determine these votes was announced.

20 111. The holding of the above meetings without 3 days notice
21 to the public was arbitrary and capricious.

22 X

23 X

24 X

25 X

26 X

27 X

1 WHEREFORE, Plaintiffs accordingly pray for the following
2 relief:

3 A. A Declaratory Judgment that the contract between
4 Defendant OFDT and CCA for the purpose of building and
5 managing the "Las Vegas Area Detention Center"
6 described above is null and void ab initio.
7

8 B. A permanent injunction enjoining defendants, their
9 agents, employees, assigns, and all persons acting in
10 concert or participating with them from performing
11 under the Development Agreement signed by the BOCC on
12 January 8, 2009, including but not limited to making
13 payments to CCA or transferring inmates to the CCA
14 facility to be located at or about 2250 East Mesquite
15 Ave., 2190 East Mesquite Ave., Pahrump, Nevada.
16

17 C. A preliminary and permanent injunction enjoining
18 Defendants, their agents, employees, assigns, and all
19 persons acting in concert or participating with them
20 from issuing permits or continuing construction of the
21 subject of the Development Agreement, the CCA facility
22 to be located at 2190 East Mesquite Ave., Pahrump,
23 Nevada.
24
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1 C. Reasonable attorneys' fees and costs including but
2 not limited to those provided under the Equal Access to
3 Justice Act, 28 U.S.C. § 2412 et seq.

4 D. Such other and further relief as this Court may
5 deem necessary and proper.
6

7 Dated this 13th day of August, 2009

8 Respectfully submitted,

9 S/nancylord/s

10 _____
Nancy Lord, M.D.

11 Nevada Bar No. 6697

12 Nancy Lord

1970 N. Leslie Rd., No. 220

13 Pahrump, NV 89060

775-751-3636

14 Attorney for Plaintiffs
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I caused a true and correct copy
3 to be served via CM/ECF pursuant to FRCP 5(c) to the
4 addresses listed by the attorneys for CCA, Nye County, and
5 Board of Nye County Commissioners in the CM/ECF filing
6 system.
7

8 Respectfully submitted

9 S/nancylord/s

10
11 Nancy Lord
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